LAW OFFICES
BRODSKY & SMITH, LLC

9595 WILSHIRE BLVD., SUITE 900
BEVERLY HILLS, CA 90212

877.534.2590
FAX 310.247.0160
www.brodskysmith.com

NEW JERSEY OFFICE
1310 N. KINGS HIGHWAY
CHERRY HILL, NJ 08034.
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE 510
BALA CYNWYD, PA 19004
610.667.6200

MAY 07 2019

April 30, 2019

Ashland LLC 6608 E 26th St City of Commerce, CA 90040 Attn: Grant Needham, Plant Manager	Ashland (KY) LLC c/o CT Corporation System, Agent for Service of Process 818 W 7th St., Ste. 930 Los Angeles, CA 90017
Ashland LLC 5200 Blazer Parkway Dublin, OH 43017 Attn: Kara Long, EHS	Ashland (KY) LLC Attn: General Counsel 50 E RiverCenter Boulevard Covington, KY 41011
Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Executive Officer Regional Water Quality Control Board Los Angeles Region 320 West Fourth Street, Suite 200 Los Angeles, CA 90013
Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents [redacted] a citizen of the State of California. This letter is to give notice that Brodsky Smith, on [redacted] behalf, intends to file a civil action against Ashland LLC ("Ashland") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Ashland's facility located at 6608 East 26th Street, City of Commerce, CA 90040 (the "Facility").

[redacted] is a citizen of the State of California who is concerned with the environmental health the Rio Hondo and Los Angeles River, and uses and enjoys the waters of the Rio Hondo and Los Angeles River, its inflows, and other areas of the overall Los Angeles River Watershed, of which the Rio Hondo and Los Angeles River are a part. [redacted]'s use and enjoyment of these waters are negatively affected by the pollution caused by Ashland's operations. Additionally, [redacted] acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Ashland's unlawful discharge of pollutants from the Facility via indirect flow into the Rio Hondo and the overall Los Angeles River Watershed.[1] Specifically, investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit No CAS000001 [State Water Resources Control Board] Water Quality Orders No. 2014-0057-DWQ (the "Industrial Stormwater Permit" or the "IGP") and 92-12-DWQ (as amended by Order No. 97-03-DWQ) (the "Previous Industrial Stormwater Permit").[2]

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Ashland of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and the Intent to File Suit, Personal privacy ex. (b)(6) intends to file suit in federal court against Ashland under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Personal privacy ex. (b)(6) is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Ashland contact Personal privacy ex. (b)(6)'s attorneys at Brodsky & Smith within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

Ashland's Facility is located at 6608 East 26th Street, City of Commerce, CA 90040. At the Facility, Ashland operates as a processor of resin materials. At the Facility, the following industrial activities occur: (i) resin processing; (ii) loading and unloading of materials; (iii) outdoor storage of materials including scrap metal, machinery, resins, diesel, and waste; (iv) outdoor processing; and (v) waste treatment and storage. Other activities carried out in the regular course of business at the facility include storage of fuel and other oils, maintenance, equipment storage, and waste storage. Repair and maintenance activities carried out at the facility include, but are not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial duties. Possible pollutants from the Facility include total suspended solids ("TSS"), waste oils, lubricants, fuel, trash, debris, hazardous materials, oil and grease ("O&G"), pH, heavy metals such as zinc, as well as other pollutants. Stormwater from the Facility discharges, indirectly, into the Rio Hondo and overall Los Angeles River Watershed.

B. The Affected Water

The Rio Hondo, Los Angeles River and overall Los Angeles River Watershed are waters of the United States. The CWA requires that water bodies such as the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed include

---

[1] Ashland's Notice of Intent ("NOI") filed with the Los Angeles Regional Water Quality Control Board ("LARWQCB") lists the receiving waters of the Facility as the "Rio Hondo River" via indirect flow. Upon investigation, it is Personal privacy ex. (b)(6)'s knowledge and belief that the most immediate receiving water of the Facility is the Rio Hondo, via indirect flow, which shortly thereafter flows into the Los Angeles River, and ultimately reaches the Pacific Ocean.

[2] On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the prior permit.

commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed, and threatens the beneficial uses and ecosystem of these watersheds, which includes habitats for threatened and endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

Ashland has submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit since as early as 1992. However, information available to Personal privacy ex. (b)(6) indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants[3] and best conventional pollutant control technology ("BCT") for conventional pollutants.[4] Industrial Stormwater Permit § I(D)(32), II(D)(2); Previous Industrial Stormwater Permit, Order Part B(3). The EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.[5] These benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.

Additionally, the Previous Industrial Stormwater Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. *See* Previous Industrial Stormwater Permit pp. VIII. The Previous Industrial Stormwater Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial Stormwater Permit. *Id.* Ashland falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the Previous Industrial Stormwater Permit during its effective period. In addition, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "MSGP")". *See* Industrial Stormwater Permit § I(D)(33). The MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and

---

[3] BAT is defined at 40 C.F.R. § 437.1 *et seq.* Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

[4] BCT is defined at 40 C.F.R. § 437.1 *et seq.* Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

[5] The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP") and can be found at: https://www.epa.gov/npdes/final-2015-msgp-documents.

incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.[6] Notably, Ashland is classified as falling under SIC Code 2821, relating to Plastics Material and Synthetic Resins, and Nonvulcanizable Elastomers, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; and (iv) Total Zinc. Ashland also tests for the additional pollutant parameters of (v) Phosphorus based on the total maximum daily load ("TMDL") of the receiving water, as discussed in its most recent SWPPP at p. 37. Based on Ashland's self-reporting data and/or lack thereof, Ashland has not met this requirement and was in violation of the Previous Stormwater Permit over a period of approximately at least the past five (5) years.

Ashland's self-reporting of industrial stormwater discharges and/or lack thereof show a pattern of exceedances of Benchmark values and/or a failure to adequately monitor numerical pollutant discharge values in every instance of self-reporting. *See* Attachment 2. This pattern of a exceedances of benchmark values and/or a lack of self-reporting indicate that Ashland has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit and Previous Industrial Stormwater Permit. [redacted] alleges and notifies Ashland that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed benchmark values for Zinc, including annual and/or instantaneous NAL overages for all such parameters within the last five (5) annual reporting periods.

Ashland's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT and BCT based levels of control also demonstrate that Ashland has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Ashland's failure to develop and/or implement adequate pollution controls to meet BAT and BCT and the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Ashland's discharges stormwater without meeting BAT/BCT. [redacted] alleges that Ashland has discharged stormwater containing excessive levels of pollutants from the Facility to the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed during at least every significant local rain event over 0.1 inches in at least the last five (5) years.[7] Attachment 3 compiles all dates in at least the last five (5) years when a significant rain event occurred. Ashland is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within at least the past five (5) years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* Industrial Stormwater Permit § III; Previous Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. *See* Industrial Stormwater Permit § VI(b)-(c); Previous Industrial Stormwater Permit, Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. *See* Industrial Stormwater Permit § VI(a); Previous Industrial Stormwater Permit at Order Part C(2). Applicable WQS are set forth in the California Toxic Rule ("CTR")[8] and Chapter 3 of the Los Angeles Region (Region 4) Water Quality

---

[6] Of note, Ashland acknowledges this requirement in their most current Stormwater Pollution Prevention Plan ("SWPPP"), at Section "Monitoring Implementation Plan", at § 6.3 p 35.

[7] Significant local rain events are reflected in the rain gauge data available at: http://www.ncdc.noaa.gov/cdo-web/search.

[8] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

Control Plan (the "Basin Plan").[9] Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for all Inland Surface and Coastal waters of Los Angeles and Ventura Counties, including but not limited to the following:

- Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial users.

- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in natural turbidity attributable to controllable water quality factors shall not exceed 20% where natural turbidity is between 0 and 50 nephelometric turbidity units ("NTU"), and shall not exceed 10% where the natural turbidity is greater than 50 NTU.

- All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.

- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Personal privacy ex. (b)(6) alleges that Ashland's stormwater discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on Ashland's self-reported data submitted to the Los Angeles Regional Water Quality Control Board. These sampling results indicate that Ashland's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS.

Personal privacy ex. (b)(6) alleges that each day that Ashland has discharged stormwater from the Facility, Ashland's stormwater has and/or may have contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed. Personal privacy ex. (b)(6) alleges that Ashland has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to the Rio Hondo, Los Angeles River and overall Los Angeles River Watershed during at least every significant local rain event over 0.1 inches in the last five (5) years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or caused or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA Ashland is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within at least the past five (5) years.

C. Failure to Develop and Implement an Adequate Stormwater Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit § A(1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit at Order Part E(2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Ashland pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, specification of

---

[9] The Basin Plan is published by the Los Angeles Regional Water Quality Control Board at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, § X(A); Previous Industrial Stormwater Permit Section § A.

Based on information available to [redacted], Ashland has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit. For Example, Ashland's SWPPP does not include and/or Ashland has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the data in Attachment 2. For example, Ashland has clearly failed to create and implement an adequate BMPs as reflected by the continuous NAL exceedances of the pollutant parameter of Zinc in the last five (5) reporting periods.

Accordingly, Ashland has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit, and Ashland will continue to be in violation every day until it develops and implements an adequate SWPPP. Ashland is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within at least the past five (5) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § B(1) and Order Part E(3). The Industrial Stormwater Permit requires that MRP ensure that each the facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by § X(A) of the Industrial Stormwater Permit and/or §A Previous Industrial Stormwater Permit.

The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § at Section B. The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*

Ashland has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater permit. For example, the data in Attachment 2 indicates that Ashland's monitoring program has not ensured that stormwater dischargers are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by the Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. Additionally, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "MSGP")". The MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2. Notably, Ashland is classified as falling under SIC Code 2821, relating to Plastics Material and Synthetic Resins, and Nonvulcanizable Elastomers, requiring it to be within numerical effluent limitations for (i) pH;

(ii) Oil and Grease; (iii) Total Suspended Solids; and (iv) Total Zinc. Ashland also tests for the additional pollutant parameters of (v) Phosphorus based on the total maximum daily load ("TMDL") of the receiving water, as discussed in its most recent SWPPP at p. 37. As previously stated, and in clear violation of the terms of the Industrial Stormwater Permit, Ashland has consistently reported benchmark exceedances and/or failed to report testing results for any applicable effluent limitation in their annual reports for the past five (5) annual reporting periods. *See* Attachments 2, 3. Therefore, the data in Attachment 2 indicates that Ashland's monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B.

As a part of the MRP, the Industrial Stormwater Permit specifies that Facility operators shall collect a total of four (4) stormwater samples throughout an annual reporting period. Specifically the Industrial Stormwater Permit requires, "The discharger to collect and analyze samples from two (2) Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)." Industrial Stormwater Permit § XI B(2).[10] Furthermore, should facility operators fail to collect samples from the first storm event of the wet season, they are still required to collect samples from two other storm events during the wet season, and explain in the annual report why the first storm event was not sampled. *Id.* Despite this requirement Ashland has failed to submit two (2) QSEs for the first half of the 2017-2018 annual reporting period or for the second half of the 2015-2016 annual reporting period, as required under the Industrial Stormwater Permit. Ashland has not submitted adequate explanations for such inadequate and insufficient data.

The Industrial Stormwater Permit also requires dischargers to include laboratory reports with their Annual Reports submitted to the Regional Board. *See* Industrial Stormwater Permit, Fact Sheet § O and/or Previous Industrial Stormwater Permit § B(14). Notably, Ashland has failed to submit laboratory reports for the required two (2) QSEs in the first half of the 2017-2018 annual reporting period, and has failed to provide laboratory reports for the required two (2) QSEs in the second half of the 2015-2016 annual reporting period, as required under the Industrial Stormwater Permit. Ashland has not submitted adequate explanations for such missing data.

As a result of Ashland's failure to adequately develop and/or implement an adequate MRP at the Facility, Ashland has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for at least the past five (5) years. These violations are ongoing. Ashland will continue to be in violation of the monitoring and reporting requirement each day that Ashland fails to adequately develop and/or implement an effective MRP at the Facility. Ashland is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for at least the last five (5) years.

E. Failure to Comply with Level 1 and Level 2 Exceedance Response Action Requirements

When the Industrial Stormwater Permit became effective on July 1, 2015, all permitted facilities were placed into "baseline status" for all parameters listed in Table 2 of the Industrial Stormwater Permit. Industrial Stormwater Permit § XII(B). Permitted facilities are placed into "Level 1 Status" if sampling indicates that an annual or instantaneous NAL exceedance for an applicable pollutant parameter has occurred. Industrial Stormwater Permit § XII(C). Level 1 status commences on July 1 following the reporting year during which the NAL exceedance(s) occurred, and the discharger enters the Exceedance Response Action ("ERA") process. *Id.* The ERA process requires the discharger to conduct an evaluation, assisted by a Qualified Industrial Storm Water Practitioner (a "QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) by October 1 following the commencement of Level 1

[11] Under the Previous Industrial Stormwater Permit, only two samplings per year was required, specifically, from "the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *See* Previous Industrial Stormwater Permit § B(5)(a). Of note, Ashland acknowledge this requirement in their most current SWPPP, at § 6.3, p 35.

Status. *Id.* The evaluation must also include the identification of the "corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit." *Id.* Furthermore, the Industrial Stormwater Permit states, "Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated." *Id.* If such remediation is not effective, and NAL exceedances for the affected pollutant parameter occurs for a second consecutive annual reporting period, the Facility is placed into "Level 2" status, requiring further remediation, analysis, reporting, and action. *Id.*

Based upon Level 1 and Level 2 status evaluations, a discharger is required, as soon as practicable but no later than January 1 following the commencement of Level 1 or Level 2 status, to prepare a Level 1 ERA Report or Level 2 ERA Action Plan, as applicable. Industrial Stormwater Permit § XII(C)(2). The Level 1 ERA Report and/or Level 2 ERA Action Plan must be prepared by a QSIP and include a summary of the Level 1 and/or Level 2 ERA evaluation(s) and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *Id.* The SWPPP revisions and additional BMP development and implementation must also be completed by January 1 following the commencement of Level 1 and/or Level 2 status, and the Level 1 or Level 2 status discharger is required to submit via SMARTS the Level 1 ERA Report or Level 2 ERA Action Plan certifying the evaluation has been conducted, and SWPPP revisions and BMP implementation have been completed. *Id.* The certification is also required to provide the QISP's identification number, name, and contact information no later than January 1 following commencement of level 1 status. *Id.*

A permitted discharger's Level 1 status for a parameter will return to Baseline status if a Level 1 ERA Report or Level 2 ERA Action Plan has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive QSEs that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. Industrial Stormwater Permit § XII(C)(2)(b). A permitted discharger will enter "Level 2 status" if there are any NAL exceedances for the same parameter when the discharger is in Level 1 status. Industrial Stormwater Permit § XII(D). Upon entry into Level 2 status, a discharger shall submit a Level 2 ERA Action Plan by January 1 following the reporting year during which NAL exceedance(s) occurred placing the discharger into Level 2 Status. *Id.* Additionally, a permitted discharger in Level 2 Status is required to submit a Level 2 ERA Technical Report on January 1 of the reporting year following the submittal of the Level 2 ERA Action Plan, which shall include, amongst other things a summary and report of the implemented BMPs implemented and their effect on pollution reduction. *Id.*

Ashland's Facility had NAL annual average exceedances for Zinc during the 2015-2016 Annual Reporting period that resulted in Level 1 status for those pollutant parameters at the Facility. Notably, following this NAL overage, Ashland failed to conduct a Level 1 ERA evaluation in a timely manner, waiting until March 9, 2017, well past the deadline of October 1, 2016.[11] Thereafter, the Ashland submitted a late Level 1 ERA Report on March 20, 2017, well after the deadline of January 1, 2017.[12] The additional BMPs identified in Ashland's submitted Level 1 ERA Report were vague and unspecific, and included no timetable for implementation. These vague and unspecific revised BMPs proved to be ineffective as sampling conducted by Ashland throughout the 2016-2017 Annual Reporting period indicate that the facility continues to discharge stormwater containing impermissibly high levels of Zinc. In fact, Ashland's reported levels of Zinc pollution in its stormwater discharges increased from the 2015-2016 annual reporting period to the 2016-2017 annual reporting period. In sum, rather than conducting a thorough evaluation to identify the BMPs in the SWPPP that correspond to the NAL exceedances at the Facility, and identify what additional BMPs are needed to prevent future NAL exceedances, Ashland submitted a late and inadequate Level 1 ERA

[11] A Level 1 ERA Evaluation must be conducted by "October 1 following commencement of Level 1 Status for any parameter with sampling results indicating an NAL Exceedance" *See*, IGP §XII(C)(1)(a).
[12] A Level 1 ERA Report must be submitted by "January 1 following commencement of Level 1 Status". *See*, IGP §XII(C)(2)(a)(ii).

Report that was ineffective and did not comply with the Industrial Stormwater Permit and has led to further NAL overages.

In addition, based upon the continued high levels of Zinc reported at the conclusion of the 2016-2017 Annual Reporting Period, Ashland was placed into "Level 2 Status" for the pollutant parameter of Zinc. Incredulously, Ashland reported in its Level 2 ERA Action Plan submitted on December 20, 2017, that it had chosen not to implement additional BMPs to curtail the issue. Predictably, Ashland's reported levels of Zinc pollution in its stormwater discharges remained impermissibly high in the ensuing 2017-2018 annual reporting period, and again, significantly increased from the previous reporting period. In sum, rather than conducting a thorough evaluation to identify the BMPs in the SWPPP that correspond to the NAL exceedances at the Facility, and identify what additional BMPs are needed to prevent future NAL exceedances, Ashland submitted a completely inadequate Level 2 ERA Action Plan that contained *no additional BMPs whatsoever*, and which was ineffective and did not comply with the Industrial Stormwater Permit and has led to further NAL overages.

Finally, despite already being in Level 2 Status for the pollutant parameter of Zinc, Ashland again reported an NAL overage for Zinc in the 2017-2018 annual reporting period, indicating continued high levels of that pollutant parameter in its stormwater discharges. Despite this concerning development, Ashland has yet to submit the required Level 2 ERA Technical Report, which would have been due on January 1, 2018.[13] As of the date of this notice, more than one year after the deadline, Ashland has continued to fail to submit such a Level 2 ERA Technical Report, thus further evidencing Ashland's violation of the exceedance response action scheme and the IGP as a whole.

As a result of Ashland's failure to adequately develop, implement, and/or submit adequate Level 1 ERA Report, Level 2 ERA Action Plans, or Level 2 ERA Technical Reports at the Facility, Ashland has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day since October 1, 2016, continuing a pattern of violations stretching back at least five (5) years. These violations are ongoing. Ashland will continue to be in violation of the monitoring and reporting requirement each day that Ashland fails to adequately develop and/or implement an effective Level 2 ERA Technical Report at the Facility. Ashland is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

F. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES Permit issued pursuant to Section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Ashland sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." Industrial Stormwater Permit, § III; Previous Industrial Stormwater Permit, Order Part A(1). Because Ashland has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a)

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

Ashland LLC and/or its related entities, including Ashland (KY) LLC are the persons responsible of the violations at the Facility described above.

[13] A Level 2 ERA Technical Report must be submitted by "January 1 of the reporting year following the submittal of the Level 2 Era Action Plan". *See*, IGP §XII(D)(2.

V. NAME AND ADDRESS OF NOTICING PARTY

[redacted]

VI. COUNSEL

Evan J. Smith, Esquire
esmith@brodskysmith.com
Ryan P. Cardona, Esquire
rcardona@brodskysmith.com
Brodsky & Smith, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
T: (877) 534-2590
F: (310) 247-0160

VII. REMEDIES

[redacted] intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Ashland for the above-referenced violations. [redacted] will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, [redacted] will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Ashland in this action. The CWA imposes civil penalty liability of up to $51,570 per day per violation for violations occurring after November 2, 2015, and $37,500 per day per violation for violations occurring after January 12, 2009 but before November 2, 2015. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. [redacted] will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, [redacted] Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

Evan J. Smith, Esquire
esmith@brodskysmith.com
Ryan P. Cardona, Esq.
rcardona@brodskysmith.com
Brodsky & Smith, LLC
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA
T: (877) 534-2590
F: (310) 247-0160

ATTACHMENT 1: EPA BENCHMARKS AND WATER QUALITY STANDARDS FOR DISCHARGES TO FRESHWATER

EPA Benchmarks, Multi-Sector General Permit ("MSGP"), & IGP

Parameter	Units	Benchmark Value	Source
pH	pH Units	Less than 6.0 Greater than 9.0 (Instantaneous)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Oil & Grease	Mg/L	25 (Instantaneous) 15 (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Total Suspended Solids	Mg/L	400 (Instantaneous) 100 (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Zinc, Total	Mg/L	0.26** (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Phosphorus, Total	Mg/L	2.00+ (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2

** The NAL is the highest value used by the U.S. EPA based on their water hardness.

+ While not an SIC required Pollutant Parameters, Ashland tests for Phosphorus based on the TMDL of the receiving water.

ATTACHMENT 2: TABLE OF EXCEEDENCES FOR ASHLAND LLC.

The following table contains each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of CFR and/or Basin Plan Water Quality Standards. All EPA Benchmarks and CFR and/or Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sample Date	Parameter	Result	Unit
2018-2019	3/6/2019	Zinc	1.35	Mg/L
2018-2019	3/6/2019	Phosphorus	2.00	Mg/L
2018-2019	3/6/2019	Zinc	0.292	Mg/L
2018-2019	3/2/2019	Zinc	1.35	Mg/L
2018-2019	2/15/2019	Zinc	0.331	Mg/L
2018-2019	2/15/2019	Zinc	0.507	Mg/L
2018-2019	2/14/2019	Zinc	0.406	Mg/L
2018-2019	1/14/2019	Zinc	0.511	Mg/L
2018-2019	12/6/2018	Zinc	0.393	Mg/L
2018-2019	11/29/2018	Zinc	0.742	Mg/L
2018-2019	11/29/2018	Zinc	0.874	Mg/L
2018-2019	10/13/2018	Zinc	1.81	Mg/L
2018-2019	10/13/2018	Zinc	0.918	Mg/L
2017-2018	3/21/2018	Zinc	0.479	Mg/L
2017-2018	3/21/2018	Zinc	0.348	Mg/L
2017-2018	2/26/2018	Zinc	3.400	Mg/L
2017-2018	2/26/2018	Zinc	0.522	Mg/L
2017-2018	1/8/2018	Zinc	1.460	Mg/L
2017-2018	1/8/2018	Zinc	0.374	Mg/L
2016-2017	1/19/2017	Zinc	0.731	Mg/L
2016-2017	1/19/2017	Zinc	0.311	Mg/L
2016-2017	1/9/2017	Zinc	0.428	Mg/L
2016-2017	1/9/2017	Zinc	0.936	Mg/L
2016-2017	12/21/2016	Zinc	0.350	Mg/L
2016-2017	12/21/2016	Zinc	0.313	Mg/L
2016-2017	12/15/2016	Zinc	0.443	Mg/L
2016-2017	12/15/2016	Zinc	0.493	Mg/L
2015-2016	12/19/2015	Zinc	0.379	Mg/L
2015-2016	12/19/2015	Zinc	0.406	Mg/L
2015-2016	10/5/2015	Zinc	0.786	Mg/L
2014-2015	4/7/2015	Zinc	7.250	Mg/L
2014-2015	4/7/2015	Zinc	0.580	Mg/L
2014-2015	11/30/2014	Zinc	0.473	Mg/L
2014-2015	11/30/2014	Zinc	5.740	Mg/L

* Ashland has failed to submit testing results or laboratory reports for the requisite two (2) QSEs due for the first half of the 2017-2018 annual reporting period, and the second half of the 2015-2016 annual reporting period.

* Ashland has recorded annual average NAL exceedances for Zinc in the 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019 annual reporting periods.

* As indicated above, Ashland has failed to properly comply with the Level 1 and Level 2 ERA requirements to properly address the above listed overages.

ATTACHMENT 3: ALLEGED DATES OF EXCEEDANCES BY ASHLAND LLC.
January 1, 2014 – April 22, 2019

Days with precipitation two-tenths of an inch or greater, as reported by NOAA's National Climatic Data Center, Stations: Los Angeles Downtown USC, CA US USW00093134, when a stormwater discharge from the Facility is likely to have occurred. http://www.ncdc.noaa.gov/cdo-web/search

2014	2015	2016	2017	2018	2019
2/2	1/10	1/5	1/5	1/8	1/5
2/27	1/11	1/6	1/9	1/9	1/7
2/28	2/22	1/31	1/11	3/2	1/12
3/1	2/28	2/17	1/12	3/10	1/14
3/2	3/1	2/18	1/19	3/15	1/15
4/1	3/2	3/6	1/20	3/16	1/16
10/31	4/7	3/7	1/22	3/21	1/17
11/1	5/8	3/11	1/23	3/22	1/31
11/30	5/14	4/8	2/3	10/12	2/2
12/2	7/18	10/17	2/6	10/13	2/3
12/3	9/15	11/20	2/7	11/22	2/4
12/12	10/5	11/21	2/10	11/29	2/5
12/16	12/13	11/26	2/11	12/5	2/9
12/17	12/19	12/15	2/17	12/6	2/10
12/30		12/16	5/7		2/14
		12/21	10/20		2/15
		12/22			3/2
		12/23			3/6
		12/24			
		12/30			